

October 27 2017 – **The BOONDOGGLE\* UNDERDRAINS**  
ILLEGALLY UNDER SILVER SPRINGS SINGLE FAMILY HOMEOWNERS NEIGHBORHOOD

**WHERE IT IS** — 5'-10' under the ground surface under private property

- on incomplete 'as built ' 1978 design maps for Silver Springs East
- under 69 lots w/underdrains along front road easement
- under 17 lots w/underdrains along the side easement of the lot
- under 12 lots w/underdrains along the back easement of the lot
- under 10 lots w/underdrains on two sides of lot

**WHERE IT IS NOT** –94 lots have no underdrains on the property

- The underdrains do NOT belong to our Association nor Board of Trustees.
- The underdrains are NOT on our subdivision recorded plat maps.
- The underdrains are NOT shown in plat easements with the other utilities.
- The underdrains are NOT dedicated, are NOT recorded, are NOT owned.
- Underdrains are not installed in any other neighboring subdivisions.
- Underdrains are not in any SSSFHOA recorded documents.

--Underdrains work is being done without Homeowner permission or legal authority.

**WHY WERE THE UNDERDRAINS INSTALLED?** The 1974 developers purchased 857 acres naming the area Silver Springs East, situated on property with high subsurface ground water that included artesian activity and a number of streams. On July 3, 1979 Stan Strebel, Planning Director, Paul Kelly, Consultant, Rinehart Pursell from J.J. Johnson, Terry Christiansen, Deputy Co. Attorney, met with the County Commission to discuss development of Silver Springs East. A motion was made to approve Silver Springs East plat 1A with four stipulations. 1. Developer to conform to Dames and Moore engineering plans for draining the land to prepare it for construction of homes and condos. 2. The County would hold **the underdrains bond for three years**. 3. If drains failed during the next three years the developer would fix them. 4. Developer to record a **"Special Notice" to all buyers and builders** (completed on **Entry 157606**) "to avoid possible structural damage from abnormal subsurface water fluctuation by using wider footings or extending the foundation down to the gravel base. **Any basements constructed will be at the owner's risk.**" Beginning in 1979 the temporary underdrains began the collection of water, until other removal systems were installed in Silver Springs: drainage channels, storm drains, sewers, retention ponds (lakes), curbs and gutters, these other systems and structures were intended for long term water mitigation.

As a result of the meeting and the "Special Notice" required above, three years later, on July 6, 1982 the County considered fulfilled the agreement for plats 1A and 1B by releasing to developer Ray Fry the \$150,000 bond money. **Entry 193367**. This document known as the Ray Fry Agreement was intended to be the end of underdrain installation. From 1982 to 2007, for thirty-six years the temporary underdrains laid dormant. The developer who installed them left. No ownership was transferred to anyone or any entity.. Summit County's Chief Civil Deputy Attorney, David Thomas wrote: "**The ownership and maintenance of the underdrains is a private matter between the landowners within the subdivision and the owner's association.**" No mandate to makes them permanent.

**SO WHO IS RESPONSIBLE FOR THE SYSTEM – NO ONE.** **The County Commissioners advised the HOA-BOT NOT to place the underdrain system under its auspices.** The underdrain system was abandoned by the developers, the Master Association, the homeowners association, the Homeowners, and the County, for three decades. Summit County holds NO mandate for our BOT or Association to repair or maintain that system of underground tubes. When Silver Springs **Single Family** HOA was organized in 1985 the SSSFHOA attorneys were instructed by the developer Vern Hardman and attorney/partner Don Stringham to not include the temporary underdrains in the organizing charter documents. This agreement was accepted by the majority vote of the Single Family Homeowners. **Entry 244975** . To this date the underdrains are not mentioned in any SSSFHOA charter documents.

**ARE THE UNDERDRAINS COMMON AREAS?** In 1989, the County required Silver Springs East land buyers and developers, Barnes-Widdows-Spieker, **to take over the former Silver Springs East developers' responsibilities** by incorporating the Silver Springs East Development Subdivisions Homeowners Association as the **Silver Springs Master Association** to hold title, manage, maintain all of SSE common areas for the (512) housing units. Utah Community Association Act, Utah Code Ann. Section 57-8a-101, et seq. defines "common areas" as property that the association "(a) owns; (b) maintains; (c) repairs; or (d) administers." The Silver Springs Master Association does not recognize the underdrains as common areas, does not own, and has never participated in terms (a) thru (d).

**UNDERDRAINS HARMFUL TO NATURE** - Underdrains have the undesirable function of leaching out homeowner landscape water and natural groundwater reserves. **Our shrinking groundwater asset is being discharged 365/24/7 from our properties. They are always on!** At the current rate of loss we can run out of ground water. Periods of hot, dry weather have not been recharging our water table; the decrease of water is stressing out our trees, land and foundations possibly making unstable soil shrinkage movement. As water tables fall, wells can go dry, including Mountain Regional Water District wells that supply Silver Springs with culinary and irrigation water.

**There is no way to shut off the underdrains desiccating function.** Already the flow of water into Silver Springs has greatly diminished by surrounding construction over the years, by climate change, by Canyons Resort, by storm drains, by diversion into retention ponds (lakes), thru drainage channels, then out to Spring Creek, and to Swaner. Complex Solutions' analysis report states 'the underdrains do not have a predictable remaining useful life.'

**WHAT ARE THE LEGAL ISSUES?** First of all, our SSSF Association does **not own** the underdrains, **not in HOA docs.** Second, the temporary underdrains are **not recorded, not authorized, not recognized** by Summit County as the underdrains have never been signed off by authorities and have **not been recorded.** Work on the underdrains is like **building without a building permit.** Third, the State Division of Water Rights has **not given permission to alter the direction or flow of the valuable ground water** resource located 5 to 10 feet below our surface. This is a grave breach of a vigorously observed law in the second driest state in the U.S. Fourth, the SSSF Board of Trustees has a **fiduciary duty to the Homeowners and their votes** in 1985, 1994, 2008, 2014 to **"Ignore the Underdrains"**. To act contrary to these votes is a **breach of trust** and **disenfranchises** the power of the Homeowners to hold control over their private properties. Board members who sidestep and evade their duties can be removed as Trustees. Those who work on the underdrains do so without Homeowners', and their collective Association's consent.

**WHY HAS THE DEFUNCT UNDERDRAINS SYSTEM BECOME AN ISSUE 35 YEARS AFTER IT WAS ABANDONED?** – A man with conflicts of interest who had not invested, as his neighbors have, in sump pumps and foundation French drains has misguidedly worked to restore the **temporary drains.** This resident has placed continual, unjustifiable pressure on the HOA Board of Trustees to pay for repairs to the defunct system that is excluded in our Articles. The board has paid over \$40,000 since 2007 without SSSF Homeowners' agreement); he has added the underdrain issue to the draft of the CCRs in 14 sections. This man is responsible for **misrepresenting** underdrains by including them in the Budget, the new Arch Standards and other HOA documents. **THESE DRAINS ARE A LIABILITY AND ENDANGER YOUR PROPERTY RIGHTS.**

**WHAT WILL IT COST EACH HOMEOWNER** – Maintenance of the underdrain system is intrusive into neighborhood private property. Draft CCRs give unrestricted access to your entire lot whether a lot is experiencing ground water issues or not, it is at the Board's sole discretion. The draft CC&R's are suggesting that **100% of the cost for maintenance, repair and replacement of the Underdrain System be the responsibility of the individual homeowner where the work is elected to be commenced.** Roto-rooting work to depths of 5'-10' and maybe 8-10' wide may cause damage or removal of trees, fences, mailboxes, landscaping, driveways, decks, etc. This can add **"\$100s of thousands of dollars to the cost of underdrain repair."** **Whether you personally need it or not.**

\*Definition of boondoggle: work or activity that is wasteful or pointless but gives the appearance of having value; a waste of money or time for unnecessary or questionable projects.

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